Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	GN Docket No. 25-133
Delete, Delete, Delete	)	

COMMENTS OF GRAY MEDIA, INC.

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Gray Media, Inc., by its attorneys, hereby submits the following comments in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Gray welcomes this long overdue initiative to repeal excessive and counter-productive rules. The Commission's systemic over-regulation of local broadcast stations has its roots in the 1930s, when broadcast media was the technological disruptor. While these regulations have always been a millstone around the industry's neck, they didn't stop broadcasting from becoming the pre-eminent provider of news and information in local markets across the county. The harm these regulations caused to broadcasters' competitiveness and efficiency was long hidden by the power of mass media and the absence of competitors that could micro-target programming and advertising to erode mass audiences.

But that changed decades ago with the emergence of first cable television, then satellite television, and, finally and decisively, the Internet. What didn't change was the Commission's appetite for more and more regulation of broadcasting. Most of these regulations target broadcasters only, while broadcasters' chief direct competitors remain free to exploit an unlevel playing field, further eroding broadcast audiences and threatening vital local programming.

[1] In Re: Delete, Delete, Delete, *Public Notice*, GN Docket No. 25-133, rel. Mar. 12, 2025 (the "*Public Notice*").

About a year ago, Chairman Carr recognized this situation as creating a "break glass" moment for broadcast regulation.[2] Gray agrees and hopes that this proceeding will be at least a first step to establishing a sensible regulatory regime for broadcasting that recognizes broadcasters are, on the one hand, only one of many voices in the local media landscape, but are also, on the other hand, the most reliable and most trusted provider of local news and information programming in the United States. If the Commission is to preserve this vital force in the American media landscape, it is going to have to – as Commissioner Carr put it – break some glass.

In these comments, Gray provides its initial thoughts on steps the Commission can take, consistent with the priorities outlined in the *Public Notice* and President Trump's executive orders, to bring broadcast regulation into line with the rules governing its competitors.

II. THE COMMISSION SHOULD DELETE ITS STRUCTURAL BROADCAST-ONLY OWNERSHIP REGULATIONS.

The Commission's structural ownership rules, found at 47 C.F.R. §73.3555, check practically every box in the *Public Notice* as favoring repeal.[3] These rules were originally fashioned in the earliest days of radio, when broadcast was a new and uniquely powerful way to reach a mass audience. The Commission has tinkered with the rules since, but in the fast-moving media marketplace of the 21st century, the rules have always remained several steps behind the times. Most famously, the Commission waited until the newspaper industry was in full-on

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2 *See* Carr Statement on FCC's Denial of WADL TV's Application, *News Release*, Apr. 24, 2025, available at https://docs.fcc.gov/public/attachments/DOC-402042A1.pdf ("As I have said recently, we are at a break glass moment for America's broadcasters. They are facing unprecedented headwinds and competition, including from their largely unregulated Big Tech competitors. The Commission should be focused on decisions that will make it easier for broadcasters to attract the capital necessary for them to invest, compete, and serve their local communities.").

3 *See* 47 C.F.R. §73.3555.

collapse before it finally repealed the newspaper/broadcast cross-ownership rule in 2017 (a decision that wasn't final until 2021).[4] Today, the remaining structural ownership rules – and particularly the current iteration of the television "duopoly rule"[5] – are affirmatively dangerous to the continued vitality of local broadcasting's most important function of delivering local news and information.

A. The Communications Act Does Not Delegate to the Commission the Power to Establish Structural Ownership Rules.

The structural ownership rules are exactly the kind of rules that the *Public Notice* identifies as ripe for deletion. First, the Communications Act says nothing about structural ownership rules like the ones maintained by the Commission. The statute does authorize the Commission to review transactions in the public interest,[6] and, before the Supreme Court's decision in *Loper Bright*, courts acquiesced in allowing the Commission to maintain its structural ownership rules.[7] But *Loper Bright* changed the analytical framework for judicial statutory construction, and now the Commission must first locate its authority in the Communications Act, not just past cases from a pre-*Loper Bright* world.

The Act offers no authority for structural ownership rules. Moreover, the Supreme Court's jurisprudence outlining the Major Question Doctrine[8] prohibits the Commission from

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4 *See* 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50, *Order on Reconsideration and Notice of Proposed Rulemaking*, 32 FCC Rcd 9802 (2017); *FCC v. Prometheus Radio Project*, 492 U.S. 414 (2021); 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket Nos. 14-50, *et al.*, *Order*, (rel. June 4, 2021).

5 *See* 73. 3555(b).

6 47 U.S.C. §310(d).

7 *See*, *e.g.*, *Prometheus*, 492 U.S. at 416-17. *See also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) ("*Loper Bright*").

8 *See West Virginia v. EPA*, 142 S. Ct. 2587, 2607–2608 (2022).

adopting rules that touch on matters of economic significance without clear statutory authority. The Commission's structural ownership rules simply cannot stand up to modern Supreme Court standards for agency rulemaking and should be deleted for that reason alone.

B. Marketplace Changes Have Rendered the Structural Ownership Rules Obsolete and Harmful to Competition, Diversity and Localism.

Second, the marketplace has changed drastically since the Commission's structural ownership rules were adopted. While the Commission has adjusted those rules over time, it has never taken proper account of the fact that broadcasters are no longer dominant in any market and instead compete fiercely for every viewer and advertising dollar they earn. The theory of the structural ownership rules is that they promote competition, diversity, and localism because (1) broadcasters are uniquely suited (and required) to serve local communities; and (2) the more broadcasters there are, the better service viewers will receive.[9] Other than the fact that broadcasters are required to serve their local communities, every piece of this analysis has been thoroughly demolished by marketplace developments.

There is simply no risk that eliminating the structural ownership rules will lead to decreased competition for viewers or advertisers because competition is rampant, and companies like Google, Facebook, and Amazon aren't going anywhere. Broadcasters' share of local advertising revenues continues to dwindle as unregulated national tech companies and other advertising platforms take an increasing share of the local ad market. These drastic changes in the marketplace more than justify deletion of the structural ownership rules to permit broadcasters to compete on a level playing field with their unregulated peers. Broadcast remains

[9] *See*, *e.g.*, 2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Report and Order*, MB Docket No. 18-349, FCC 23-117, para. 71 (2022) ("2018 Quad"), *appeal pending sub nom.*, *Zimmer Radio v. FCC*, No. 24-1380 (8th Cir.).

important, but as one of many competitors, not as a dominant player needing special regulations. Deleting the structural ownership rules will allow broadcasters to compete more effectively and preserve their local news operations, which should be the Commission's goal.

Likewise, there is no evidence that more broadcasters in a market leads to better local service. Quite the opposite is true. Indeed, given the dilution of broadcast audiences and advertising revenue, too many independent stations in a market are more likely to lead to less local service than more because local news production is expensive and there just isn't enough revenue in many markets to support a large number of separately owned news producing stations. Just five years ago Gray commissioned a study that was later submitted to the Commission examining whether local consolidation led to decreased local service. The study clearly showed the opposite – when station groups are permitted to form efficient combinations, local news improves in both quality and quantity.[10] In other words, efficient local station combinations promote localism, diversity, and, ultimately, the public interest.[11]

C. The Commission's Structural Ownership Rules Cannot Survive a Rational Cost/Benefit Analysis.

The structural ownership rules should also be repealed because the cost to the public of enforcing these rules greatly outweighs any theoretical benefit. The supposed benefits of the

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[10] Mark R. Fratrik, Ph.D., SVP/Chief Economist, BIA, The Impact on the Amount of News Programming from Consolidation in the Local Television Station Industry (Sept. 23, 2020).

[11] An economic study released by the Commission in 2021 suggests the reasons this is the case. *See* Kim Makuch and Jonathan Levy, Office of Economics and Analytics Federal Communications Commission, *OEA Working Paper 52: Market Size and Local Television News*, rel. Jan. 15, 2021 ("OEA 52"). OEA 52 shows that due to the expense of producing local news and the stagnation of revenue available to television stations, the number of independently-owned news producing stations that a market can support declines as market size declines, and that half the markets in the U.S. can support only two news producing stations. *See id.* at 4. It is no surprise then that when stations are able to combine operations, particularly in smaller markets, their news output would increase in both quality and quantity.

rules – increased diversity, localism, and competition – are theoretical and will never be realized in any concrete way by consumers. The argument essentially boils down to "more is better." In this case, that argument badly misses the mark.

The rules only promote a very specific, very narrow form of competition by prohibiting a single station from gaining the lion's share of the local over-the-air spot advertising market in each DMA. That pyrrhic victory comes at the high cost of keeping broadcasters from effectively competing with unregulated Big Tech companies and from gaining sufficient leverage to negotiate with the national networks owned by large media conglomerates. Broadcasters' inability to compete effectively for more advertising harms localism by ensuring that fewer local resources will be redirected back to the community in the form of local news and information services. Instead, the ownership rules make broadcasters and viewers make do with less while Big Tech companies siphon local money out of local markets and back to Silicon Valley. These rules don't work for consumers, they work for entertainment conglomerates and Big Tech. Since broadcast television and local news are key to an informed citizenry, the cost to viewers of depressing output of local news is simply too high to allow these rules to continue.

D. Common Sense Dictates the Deletion of Section 73.3555.

Given the marketplace changes discussed above, the Commission's structural ownership rules have become a draconian solution in search of a problem. Even back in 1996, before the Internet took hold, Congress realized there was little justification for these rules.[12] Yet, rather than reconsider the need for the ownership rules (as required by Section 202(h)) of the 1996 Act, the Commission has made its structural ownership rules even more complex and byzantine – straying even further from what Congress has authorized.

[12] Telecommunications Act of 1996, 110 Stat. 56 Pub. L. 104–104, Section 202, Feb. 8, 1996.

The key recent example of this is note 11 to the local television ownership rule.[13] In 2014, the Commission used a periodic ownership review to expand the local television multiple ownership rule to prohibit affiliation swaps that result in one owner controlling more than two stations among the Top 4 ranked stations in a market.[14] In 2023, the Commission again tightened the local ownership rule by extending it to include low-power stations and multicast streams.[15] Yet, as two judges of a 3-judge panel of the 11th Circuit recently found, the Commission likely has no authority to make rules governing the acquisition of network affiliations.[16] In the future, note 11 is likely to be struck down or rendered unenforceable by the courts. The Commission should delete note 11 before the courts do.

The obvious problems with note 11 shine a light on the larger problem with the structural ownership rules themselves. While courts gave them deference in the pre-*Loper* world, their lack of statutory grounding and economic importance should make them an endangered species now. The Commission should use its current quadrennial ownership review to consider whether all of the structural ownership rules should be repealed. At a minimum, the local television ownership rule, which now functions chiefly as a barrier to local investment in local news, should be repealed.

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13 47 C.F.R. §73.35555(b).

14 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 31 FCC Rcd 9864, paras. 45-52 (2016).

15 2018 Quad at para. 97-108.

16 *See Gray Television, Inc. v. FCC*, No. 22-14274, slip op. 11th Cir. rel. Mar. 7, 2025 (Brasher, J. and Pryor, CJ, concurring).

III. THE COMMISSION SHOULD REPEAL OR REFORM UNCONSTITUTIONAL AND INEFFECTIVE PROGRAMMING MANDATES.

With a few notable exceptions (like indecency and cigarette advertising[17]), the Communications Act champions broadcasters' freedom to make judgments about what their communities need and want to see on their televisions.[18] Gray and other broadcasters take very seriously their mandate to air programming that serves the public interest, and Gray is a market leader when it comes to providing substantial, award winning news and information programming in local markets. Gray is proud of its programming and service to its community, and it is equally suspicious of government efforts to control that programming.

For the most part, Congress and the Commission have respected the First Amendment and Section 326 of the Act, both of which protect broadcasters against government violations of their Free Speech rights. Nonetheless, over the years, the Commission has adopted coercive programming and record keeping requirements in the areas of children's programming, issue-related programming, and, more recently, foreign sponsorship identification. These requirements intrude on broadcasters' fundamental free speech rights and should be repealed or reformed.

A. Children's Programming (47 C.F.R. §§ 73.670-.671, .673, and 73.3526(b)(11)(i))

The Children's Television Act of 1990, directed the Commission to adopt rules (1) limiting the commercial material in children's programming; and (2) requiring the assessment of each television licensee's service to children when those licenses are renewed.[19] The Commission codified these requirements in its rules in a manner that seeks to unduly control

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17 *See* 18 U.S.C. §1464; 47 CFR §73.3999; see also 15 U.S.C. §1335; 47 CFR §73.4055.

18 U.S. Const. amend. I. *See also*, 47 U.S.C. §326.

19 Public Law 101–437 (the "CTA").

broadcasters' programming choices and therefore infringes broadcasters' First Amendment rights.

To implement Congress's direction that licensees' service to children be assessed at license renewal, the Commission created a "safe harbor" requirement that three hours per week of regularly scheduled children's programming satisfies a licensee's obligations.[20] In 2019, the Commission adopted rules providing broadcasters with flexibility in how to meet this safe harbor requirement, but it left that programming directive in place.[21]

The Commission's actions in this area send a clear message from the government that broadcasters should devote at least three hours per week of their programming time to programs the government decides are suitable for children. However well-meaning this requirement may be, it clearly is inconsistent with modern Supreme Court jurisprudence regarding compelled speech.[22] The Commission's children's programming reporting requirements are likewise unconstitutional because they compel broadcasters to keep a diary of their compelled speech.

The Commission's license renewal authority is sufficient to ensure that broadcasters serve the needs of children. For example, the Commission could simply add a new certification to the license renewal form and ask broadcasters to certify that they meet the educational and informational needs of children.[23] Prescriptive children's programming obligations, however, are unlawful and should be rescinded. The Commission should eliminate the "safe harbor" and

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20 47 C.F.R. §73.671(d).

21 Children's Television Programming Rules, *Report and Order and Notice of Proposed Rulemaking*, 34 FCC Rcd 5822 (2019).

22 *See 303 Creative LLC et al. v. Elenis et al.*, 600 U.S. 570 (2022).

23 The Commission currently uses certifications on station license renewal forms to confirm compliance with other important FCC requirements, such as whether grant of a license renewal application would comply with the FCC's environmental and RF exposure rules. *See, e.g.* FCC Form 303-S.

reporting requirements and consider licensees' service to children in a renewal proceeding only if an opponent raises credible arguments that a station has failed to serve the children in its audience.

The commercial limits in children's programming set by the CTA (10.5 minutes/hour on weekend days and 12 minutes/hour on weekdays) also are codified in the Commission's rules. While these limits were imposed by Congress, they still infringe on broadcasters' First Amendment rights because they regulate the content of broadcaster speech. These rules are now more than three decades old. Congress explicitly gave the Commission authority to modify these requirements upon a showing of the public interest.[24] The Commission should conduct a rulemaking to review commercial limits in children's programming and consider lifting these restrictions due to their unconstitutional effects.

B. Issues and Programs Lists (47 C.F.R. §73.3526(b)(11)(i)

Current Commission rules require broadcasters to identify issues of community concern and include in their public file quarterly lists of such issues and the programming aired to address them. The basis for this rule is to ensure that local broadcasters are serving the public interest. Unfortunately, the means the Commission has chosen to enforce this requirement is textbook compelled speech. As the 9th Circuit Court of Appeals recognized in *NetChoice v. Bonta*, 113 F.4th 1101 (2024), requiring a company to opine on issues of public concern and the appropriate ways to address them is facially inconsistent with the First Amendment.

Gray, of course, has no objection to the requirement that it broadcast in the public interest, and Gray stations fulfill that mandate every day by providing best-in-class local news to millions of viewers across the country. But requiring broadcasters to identify, address, and

[24] 47 U.S.C. §303a(c).

report issues of public concern is both artificial and intrusive. Effective news-producing stations like Gray's address issues of public concern on a daily basis, but converting that act of free expression into a performative government reporting requirement violates Gray's First Amendment rights. As with children' programming, the Commission has authority to review each television station's success in addressing issues of public concern at each license renewal, and the best way to do that is to address the issue if someone raises it in opposition to renewals.[25]

Even if the Commission somehow believes the issues and programs list requirement is constitutional, it should be repealed for the separate reason that it is entirely ineffectual at accomplishing any public interest goal. Issues and programs lists are nothing more than highly artificial summaries of what Gray's stations do every day to ensure their viewers are informed about important local, regional, and national events. The lists themselves end up in the little-used online public file and are rarely read by anyone. At renewal, the Commission checks to see if the lists were uploaded on time and issues admonishments or fines if one or more of the lists is missing or was not uploaded on time. Gray notes, however, that there is never any substantive investigation into the judgments a broadcaster made in identifying or addressing issues of public concern, given the FCC's limitations in reviewing broadcaster programing choices under the First Amendment. Moreover, if the Commission did a substantive review, such reviews couldn't lead anywhere other than compelled speech. So, this entire exercise has devolved into make-work – exactly the kind of make-work that saps broadcasters' resources and makes them less effective at competing with companies that remain blissfully free of these kinds of pointless obligations. The issues and programs list requirement is unconstitutional, but it is also a colossal

[25] Similar to Gray's suggestion of adopting a certification requirement for Children's Programming obligations, the Commission could also adopt a certification about whether a station has, during its license term, addressed matters of public concern.

waster of broadcasters' and the Commission's time and energy. Either reason suffices for deleting this requirement in its entirety.

C. Foreign Sponsorship ID (47 C.F.R. § 73.1212(j))

The Commission has spent the last several years wresting with how it can require broadcasters to identify foreign government purchasers of advertising and programming time on U.S. stations.[26] The Commission undertook this struggle even though broadcasters are already required to identify the sponsors of all programming under existing rules. Gray and the rest of the broadcasting industry supports the idea that U.S. airwaves should not be used for foreign propaganda. But the rules that the Commission has tried to adopt have already been reversed in part by the courts, and the revised rules are likely to fare no better.[27]

Gray would never broadcast foreign government propaganda at any price. But the rules the Commission has adopted are premised on the idea that broadcasters and American television viewers are gullible and wouldn't be able to recognize propaganda for what it is. This is a false premise, which is why the record evidence was so thin. The fact that the rule is designed to remedy a problem that doesn't exist is the first clue that it should be deleted.

The second clue is that the rules the Commission has adopted – even after being pared back by the courts – are nonsensical because they cover only broadcasters, leaving all other video providers free to air as much unidentified foreign programming/propaganda as they wish. While broadcast television still delivers mass audiences, most of the time more people are

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[26] Sponsorship Identification Requirements for Foreign Government-Provided Programming, *Report and Order*, 36 FCC Rcd 7702 (2021), *rev'd and remanded in part*, *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. 2022); Sponsorship Identification Requirements for Foreign Government-Provided Programming, *Second Report and Order*, 39 FCC Rcd 6049 (2024), *appeal pending sub nom.*, *NAB v. FCC*, No. 24-1296 (D.C. Cir,).

[27] *See id.*

consuming a non-broadcast video programming than broadcast. While Gray appreciates that the Commission can regulate only where it has jurisdiction, that doesn't mean the Commission should weigh down regulated entities with new regulations when those regulations can't possibly solve the problem they are designed to solve (especially where, as here, there is no problem to solve). Saddling broadcasters and only broadcasters with foreign sponsorship identification requirements might be within the Commission's delegated authority from Congress, but it is still arbitrary and capricious because the rules can't actually accomplish the goal of comprehensively protecting Americans from foreign propaganda.

But more importantly, these rules are unconstitutional because they inject government-required speech into political advertising, public service announcements, and advertisements for goods and services. This violates both Section 326 and the First Amendment. Tolerating this constitutional infirmity is a pretty big risk to take to solve a problem that hasn't materialized. The Commission should scrap the enterprise of adopting special disclosure rules for foreign advertisers or programmers.

D. Emergency Alert System (47 C.F.R. § 11.45)

The Emergency Alert System plays an important part in disaster preparedness at the local, regional, and national levels. The availability of a clear, nationwide communications channel could prove crucial in the event of a national disaster and illustrates the value of a strong, vibrant broadcasting system.

One element of the EAS rules, however, is in serious need of reform. Section 11.45 of the Commission's rules, among other things, requires a station to report to the Commission within 24 hours of transmitting a "false alert."[28] Gray recognizes that there are legitimate public

[28] *See* 47 C.F.R. §11.45(b).

safety interests that this rule is intended to address, and that Section 325(a) of the Act prohibits the transmission of false signals of distress.[29] Unfortunately, the Commission's interpretation of Section 11.45 has proved to be substantially overbroad, chilling speech protected by the First Amendment and sweeping in instances of use of EAS codes that do nothing to communicate a false EAS message or endanger public safety.

The Commission appears to have interpreted Section 11.45(a) to prohibit any use of anything that sounds like an EAS tone in programming other than an intentional EAS activation. So, a false activation of the EAS System to warn of a zombie invasion may clearly violate the rule, but using an EAS tone in a news segment designed to educate the public about the EAS system and what those tones mean should not. The first of those instances certainly implicates public safety; the second one just as obviously does not.

The First Amendment protects editorial decisions regarding the use of simulations of the EAS tone in news and entertainment programming. There is simply no risk that viewers will believe that the EAS system is being activated in these contexts or that an emergency is occurring. There is a difference between using a partial tone in a news segment or a simulated tone in a dramatic program and incidents like what occurred on the *Billy Bones Show* where replaying the entire tone engaged the equipment of EAS participants transmitting the show. The first is valuable speech that harms no one, while the second actually posed a danger to public safety.[30] As long as the tone used does not active the EAS system or lock receivers onto the EAS tone, such simulations should be permitted, and no notification should be required.

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[29] 47 U.S.C. §325(a).

[30] iHeart to Pay $1M for Misusing EAS Tones During The Bobby Bones Show, *Order and Consent Decree*, 30 FCC Rcd 4442 (2015).

The solution to the overreach of Section 11.45 is to better tailor the rule to its intended purpose and the actual statutory language in Section 325(a). The Commission should delete the portion of the rule that operates as a "gotcha" when a simulation of the tone is used in news or entertainment programming unrelated to activation of the EAS system itself. A simulated EAS tone that cannot trigger another station's or cable system's EAS equipment does not create a public safety issue and should not violate any rule.

IV. THE COMMISSION SHOULD REPEAL UNAUTHORIZED AND OUTDATED REPORTING REQUIREMENTS.

In addition to the unconstitutional rules discussed above, the Commission should also eliminate rules that are outdated and, in some cases, impermissible under current law. While these rules may have served the public interest when first adopted, they have aged poorly and now serve mainly to restrict broadcaster competition and inhibit local station production of vital local news and information.

A. Equal Employment Opportunity Rules (47 C.F.R. § 73.2080)

Equal employment opportunity ("EEO") rules for broadcasters were first adopted by the Commission in 1969 as part of an effort to ensure that women and minorities could achieve a greater representation in the broadcast industry.[31] Under those rules, the Commission developed license renewal processing guidelines which required broadcasters to have affirmative action plans for minorities and women, given that stations faced additional scrutiny when their workforce demographics differed from local workforce statistics.[32] Congress approved and expanded the Commission's requirements in 1992, when it made substantial legislative findings

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31 *See Nondiscrimination in Employment Practices,* 18 F.C.C. 2d 240 (1969).

32 *See, e.g., Lutheran Church Missouri-Synod v. FCC,* 141 F.3d 344 (D.C. Cir. 1998) ("*Missouri Synod*").

regarding the need for broadcast EEO rules and adopted a number of amendments to the Commission's existing rules.[33]

Since 1992, the Commission's EEO rules have undergone several revisions in response to court decisions that found the Commission's EEO rules unlawful.[34] As a result, the current set of EEO rules, adopted in 2003, do not govern broadcaster hiring practices specifically but rather require broadcasters to recruit broadly and, more significantly, impose extensive reporting requirements where broadcasters have to document their recruitment efforts under strict Commission guidelines.[35] More recently, in 2024, the Commission expanded its rules to include additional reporting requirements where broadcasters would report information about their station employees broken down by job category, race, and gender, and the Commission would publish that data to the general public.[36]

Recent changes in the law, as well as the President's Executive Orders, mandate that the Commissions take a fresh look at its EEO rules – including the substantive rules and all reporting requirements – and modernize those rules to comport with the law as it stands today, not as it stood in 1992. As then-Commissioner Carr and Commissioner Simington argued in dissent to the Commission's insistence on collecting and publicly disseminating station-level EEO information fails under the 5th Amendment of the Constitution for the same reason that the

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33 *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, 1498 (1992).

34 *See, e.g., Missouri Synod*; *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13 (2001) ("*MD/DC/DE Broadcasters*").

35 Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, *Second Report and Order and Third Notice of Proposed Rulemaking*, 17 FCC Rcd 24018 (2002).

36 Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, *Fourth Report and Order, Order on Reconsideration, and Second Notice of Proposed Rulemaking*, 39 FCC Rcd 1791 (2024) (the "*2024 Order*").

Commission's past EEO efforts failed – the reporting requirements are designed to pressure stations into hiring female and minority candidates irrespective of qualification.[37]

Gray agrees with the Commissioners' analysis of the deficiencies of the Commission's 2024 Order. But Gray would take that one step further and question whether any of the Commission's EEO rules remain consistent with the Constitution. Gray believes whole-heartedly in equal employment opportunity for all. But the reality is that programs designed to encourage race- and gender-based decision making have consistently been struck down by the courts as invidious discrimination.[38] Since the Commission's EEO rules are admittedly designed to improve the representation of women and minorities in television station employment, it is impossible to argue that the program isn't designed to encourage gender- and race-based decision making. Accordingly, it appears that the Commission's EEO rules and reporting requirements are inconsistent with current law regarding race and gender preferences.

Gray recognizes that Section 334 of the Act purports to prohibit the Commission from revising its EEO rules in effect in 1992.[39] As the Commission has recognized, however, that statutory command cannot withstand the changes in law regarding race and gender preferences in hiring that have occurred since that date.[40] At the very least, the Commission possesses the authority to conform its rules to current law and to continue to exercise its general rulemaking authority in the public interest.[41] The EEO data collection and reporting rules cannot meet that

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37 *See id.* (dissenting statements of Commissioners Carr and Simington).

38 *See*, *e.g.*, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

39 47 U.S.C. §334.

40 *See* 2024 Order at n.18.

41 *See id.*

test because, as written, they do little other than fuel discord and encourage race and gender-based hiring decisions.

Even if the Commission were to determine that its EEO program continues to have some legitimate public interest purpose, the rules would still fail unless that purpose outweighs the costs to broadcasters of complying with the program and the risk that administering the program will encourage invidious discrimination. And, again, the Commission must consider whether it is worth it to impose only on broadcasters (and MVPDs) an EEO program that will not and cannot apply to competing tech companies that are outside the Commission's current jurisdiction. Gray submits that the correct answer to these questions is that (1) broadcasters are subject to general federal anti-discrimination laws just like any other company; and, therefore, (2) there is no sense in the Commission operating a separate EEO program just for the subset of FCC-regulated media companies. Whatever small benefit would be gained by continuing with this program is outweighed by the economic burdens it places on regulated parties.[42]

Accordingly, Gray recommends that the Commission institute a proceeding to consider eliminating the EEO rules and reporting requirements and ensuring that any remaining rules and reporting requirements are consistent with current constitutional law.

B. Biennial Ownership Reporting (47 C.F.R. § 73.3615)

Unlike other Commission licensees, broadcasters must currently file ownership reports detailing station ownership every two years, even when control of a station has not changed. These filing obligations require stations to report information that has nothing to do with ownership and ask for far more information than necessary to determine control of the station.

[42] If the Commission decides (wrongly in Gray's view) that Congress's actions in 1992 effectively foreclose the Commission from entirely repealing its EEO rules the Commission should carve back its rules to the maximum amount the Commission believes is permitted by law.

Indeed, current broadcaster ownership reporting requirements can, and often do, deter parties from investing in broadcast groups because of the amount of detailed information collected. As with many of the Commission's filing requirements, the preparation of these reports is costly and time-consuming, and the reports themselves provide information that is of limited value to the public or the Commission. These filings also are not required by, and have no foundation in, any of the provisions of the Communications Act.

If the Commission wants to support investment in broadcasting, it should eliminate its biennial ownership reporting requirements and limit ownership report filings to those instances when a license is assigned or subject to a change in control. The Commission already receives all necessary ownership information when it fulfills its statutory function of approving requests for authority to assign or transfer control of a broadcast licenses. There is no need for continual periodic reporting of that same information.

C. **Public File Requirements** (47 C.F.R. § 73.3526)

Another requirement that the FCC imposes on broadcasters without any authorization from Congress is the requirement that television stations maintain an online public inspection file. But the lack of congressional authorization has not kept the Commission from requiring broadcasters to expend precious local resources on maintaining a largely pointless database that few use. To be fair, some of the information that each television station is required to maintain in its online file is automatically uploaded by the Commission, including links to station applications, a contour map, and general information about broadcasting. The public file also contains information about the political advertising (candidate and issue group) that runs on a station, which is required by statute.[43] The rest of the information in a station's public file,

[43] *See* 47 U.S.C. § 315(d).

however, is required to be uploaded by each station, despite the fact that Congress never mentioned a public file (other than the political file) in the Communications Act.

While the public file rule appears to be part of the Commission's efforts to make sure that stations satisfy carry out broadcasters' generalized public interest obligations, it is a particularly ineffective way of doing that. Moreover, compliance with the public file obligations is financially burdensome and serves practically no public purpose because there is no evidence that members of the public actually use the online public file in significant numbers or in any meaningful way.

As discussed above, Gray believes that the Commission should eliminate outdated, illegal regulatory obligations related to station Children's Television Programming Reports and Issues/Programs Reports. While eliminating those burdens would lessen the amount of material that broadcasters need to upload to their public files, other public file obligations would still remain. Gray therefore urges the Commission to repeal the public file requirements other than for the statutorily required materials for the political public file.

V. CONCLUSION

For the reasons stated above, Gray urges the Commission to move quickly to delete the rules identified herein.

Respectfully submitted,

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